HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 58 of 2002

Prem Shankar and others
Vs.
Jasbir Singh and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 28.09.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 58 of 2002

Prem Shankar & other ..... Appellants.

Versus

Jasbir Singh & another ..... Respondents

A.O. No. 59 of 2002

Malkhan Singh .....Appellants.

Versus

Jasbir Singh & another .....Respondents

A.O. No. 60 of 2002

Ram Singh & another ..... Appellants

Versus

Jasbir Singh & another ..... Respondents

Dated: 28.9.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appalls have been field against the judgment and award dated 31.10.2001 passed by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar.

Briefly stated the appellants have field separate claim petitions under Section 110 of the Motor Vehicle Act, for grant of compensation on account of injuries sustained by them in a motor vehicle accident. The petitioners have alleged that on 5.7.2000 the petitioners were traveling by a truck No. UP 41A/5550. The truck met with accident near Shivrajpur Police Outpost at Kashipur due to rash and negligent driving by the truck driver. The petitioners incurred considerable amount in their treatment and has claimed compensation for the same.

The opposite parties have contested the claim petitions and have filed their respective written statements. The owner of the truck has denied that the accident was caused due to rash and negligent driving by the truck driver. It has been contended by the owner of the truck that the truck was comprehensively insured with the opposite party no. 2 the United India Insurance Company and the insurer is liable to pay compensation to the petitioners, if any. The opposite party insurance company has field its written statement and has asserted that the vehicle was goods carrier and passengers were traveling by the truck illegally. The insurance company is not liable to pay compensation to the passengers as the owner of the truck has flouted the terms and conditions of the insurance policy.

On the basis of pleadings of the parties the Claims Tribunal has framed as many as four issues.

The claims tribunal on the basis of ocular testimony of eyewitness has held that the accident took place due to rash and

negligent driving of the truck in question. The Claims Tribunal has awarded a sum of Rs.15,000/- as compensation in each of the three cases. The trial Court has also held that as the truck was carrying passengers in violation of the terms and conditions of the insurance policy, the insurance company is not liable to pay compensation to the petitioners and the entire compensation is payable by the owner of the truck. Feeling aggrieved against the order the claims have preferred the present appeals.

The appellants have challenged the award on the ground that the truck was insured with the opposite party no.2 comprehensively and as such the insurance company is liable to pay compensation to the claimants. As against this the learned counsel for the respondent no.1 has relied upon 2004 (2) U.D. 364, Pramod Kumar Agarwal and others vs. Smt. Mushtari Begum and others. In this case the Apex Court after relying upon the order passed in Baljit Kaur's case [2004 (2) SCC,1] has held that the insurer shall pay the compensation fixed by the Tribunal to the claimants and to recover the same from the owner of the vehicle. The observation of the Apex Court in [2004 (2) SCC,1] National Insurance Company vs. Baljit Kaur is quoted ad under:

"21. *The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as*

also the High Court had proceeded in terms of the decision of this Court in Satpal Singh1. The said decision has been overruled only in Asha Rani2. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, n terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

So far as the amount of compensation is concerned the Claims Tribunal has based its findings on the evidence available on record and I do not find any reason to interfere in the finding of fact arrived at by the Claims Tribunal.

As the accident was caused due to rash and negligent driving by the truck driver who was under the employment of the respondent no.1, hence the respondent no.1 is vicariously liable to pay compensation to the petitioner. However, the

insurance company is directed to pay compensation to the claimants as awarded by the Claims Tribunal, which shall be recovered from the owner of the truck on filing an application before the Claims Tribunal on execution side in view of the observations made by the Apex Court in the case of Baljit Kaur and Promod Kumar (supra).

Subject to the aforesaid observation, the appeals are disposed of. No order as to costs.

(Rajesh Tandon J.)

28.9.2004

*Dhyani